

SB2651



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2651

Introduced 1/21/2014, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-805

Amends the Juvenile Court Act of 1987. Provides that if a petition alleges commission by a minor 13 years of age or older of an act that constitutes the offense of battery or aggravated battery by committing battery with the specific intent to cause another person to lose consciousness, the Juvenile Judge designated to hear and determine those motions shall, upon determining that there is probable cause that the allegations are true, enter an order permitting prosecution under the criminal laws of Illinois.

LRB098 15927 RLC 50974 b

A BILL FOR

1 AN ACT concerning courts.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Juvenile Court Act of 1987 is amended by
5 changing Section 5-805 as follows:

6 (705 ILCS 405/5-805)

7 Sec. 5-805. Transfer of jurisdiction.

8 (1) Mandatory transfers.

9 (a) If a petition alleges commission by a minor 15
10 years of age or older of an act that constitutes a forcible
11 felony under the laws of this State, and if a motion by the
12 State's Attorney to prosecute the minor under the criminal
13 laws of Illinois for the alleged forcible felony alleges
14 that (i) the minor has previously been adjudicated
15 delinquent or found guilty for commission of an act that
16 constitutes a felony under the laws of this State or any
17 other state and (ii) the act that constitutes the offense
18 was committed in furtherance of criminal activity by an
19 organized gang, the Juvenile Judge assigned to hear and
20 determine those motions shall, upon determining that there
21 is probable cause that both allegations are true, enter an
22 order permitting prosecution under the criminal laws of
23 Illinois.

1 (b) If a petition alleges commission by a minor 15
2 years of age or older of an act that constitutes a felony
3 under the laws of this State, and if a motion by a State's
4 Attorney to prosecute the minor under the criminal laws of
5 Illinois for the alleged felony alleges that (i) the minor
6 has previously been adjudicated delinquent or found guilty
7 for commission of an act that constitutes a forcible felony
8 under the laws of this State or any other state and (ii)
9 the act that constitutes the offense was committed in
10 furtherance of criminal activities by an organized gang,
11 the Juvenile Judge assigned to hear and determine those
12 motions shall, upon determining that there is probable
13 cause that both allegations are true, enter an order
14 permitting prosecution under the criminal laws of
15 Illinois.

16 (c) If a petition alleges commission by a minor 15
17 years of age or older of: (i) an act that constitutes an
18 offense enumerated in the presumptive transfer provisions
19 of subsection (2); and (ii) the minor has previously been
20 adjudicated delinquent or found guilty of a forcible
21 felony, the Juvenile Judge designated to hear and determine
22 those motions shall, upon determining that there is
23 probable cause that both allegations are true, enter an
24 order permitting prosecution under the criminal laws of
25 Illinois.

26 (d) If a petition alleges commission by a minor 15

1 years of age or older of an act that constitutes the
2 offense of aggravated discharge of a firearm committed in a
3 school, on the real property comprising a school, within
4 1,000 feet of the real property comprising a school, at a
5 school related activity, or on, boarding, or departing from
6 any conveyance owned, leased, or contracted by a school or
7 school district to transport students to or from school or
8 a school related activity, regardless of the time of day or
9 the time of year, the juvenile judge designated to hear and
10 determine those motions shall, upon determining that there
11 is probable cause that the allegations are true, enter an
12 order permitting prosecution under the criminal laws of
13 Illinois.

14 (e) If a petition alleges commission by a minor 13
15 years of age or older of an act that constitutes the
16 offense of battery under Section 12-3 or aggravated battery
17 under paragraph (1) of subsection (a) of Section 12-3.05 of
18 the Criminal Code of 2012 if the specific intent of the
19 minor is to cause the victim of the offense to lose
20 consciousness, the Juvenile Judge designated to hear and
21 determine those motions shall, upon determining that there
22 is probable cause that the allegations are true, enter an
23 order permitting prosecution under the criminal laws of
24 Illinois.

25 For purposes of this paragraph (d) of subsection (1):

26 "School" means a public or private elementary or

1 secondary school, community college, college, or
2 university.

3 "School related activity" means any sporting, social,
4 academic, or other activity for which students' attendance
5 or participation is sponsored, organized, or funded in
6 whole or in part by a school or school district.

7 (2) Presumptive transfer.

8 (a) If the State's Attorney files a petition, at any
9 time prior to commencement of the minor's trial, to permit
10 prosecution under the criminal laws and the petition
11 alleges the commission by a minor 15 years of age or older
12 of: (i) a Class X felony other than armed violence; (ii)
13 aggravated discharge of a firearm; (iii) armed violence
14 with a firearm when the predicate offense is a Class 1 or
15 Class 2 felony and the State's Attorney's motion to
16 transfer the case alleges that the offense committed is in
17 furtherance of the criminal activities of an organized
18 gang; (iv) armed violence with a firearm when the predicate
19 offense is a violation of the Illinois Controlled
20 Substances Act, a violation of the Cannabis Control Act, or
21 a violation of the Methamphetamine Control and Community
22 Protection Act; (v) armed violence when the weapon involved
23 was a machine gun or other weapon described in subsection
24 (a) (7) of Section 24-1 of the Criminal Code of 1961 or the
25 Criminal Code of 2012; (vi) an act in violation of Section
26 401 of the Illinois Controlled Substances Act which is a

1 Class X felony, while in a school, regardless of the time
2 of day or the time of year, or on any conveyance owned,
3 leased, or contracted by a school to transport students to
4 or from school or a school related activity, or on
5 residential property owned, operated, or managed by a
6 public housing agency or leased by a public housing agency
7 as part of a scattered site or mixed-income development; or
8 (vii) an act in violation of Section 401 of the Illinois
9 Controlled Substances Act and the offense is alleged to
10 have occurred while in a school or on a public way within
11 1,000 feet of the real property comprising any school,
12 regardless of the time of day or the time of year when the
13 delivery or intended delivery of any amount of the
14 controlled substance is to a person under 17 years of age,
15 (to qualify for a presumptive transfer under paragraph (vi)
16 or (vii) of this clause (2)(a), the violation cannot be
17 based upon subsection (b) of Section 407 of the Illinois
18 Controlled Substances Act) and, if the juvenile judge
19 assigned to hear and determine motions to transfer a case
20 for prosecution in the criminal court determines that there
21 is probable cause to believe that the allegations in the
22 petition and motion are true, there is a rebuttable
23 presumption that the minor is not a fit and proper subject
24 to be dealt with under the Juvenile Justice Reform
25 Provisions of 1998 (Public Act 90-590), and that, except as
26 provided in paragraph (b), the case should be transferred

1 to the criminal court.

2 (b) The judge shall enter an order permitting
3 prosecution under the criminal laws of Illinois unless the
4 judge makes a finding based on clear and convincing
5 evidence that the minor would be amenable to the care,
6 treatment, and training programs available through the
7 facilities of the juvenile court based on an evaluation of
8 the following:

9 (i) the age of the minor;

10 (ii) the history of the minor, including:

11 (A) any previous delinquent or criminal
12 history of the minor,

13 (B) any previous abuse or neglect history of
14 the minor, and

15 (C) any mental health, physical or educational
16 history of the minor or combination of these
17 factors;

18 (iii) the circumstances of the offense, including:

19 (A) the seriousness of the offense,

20 (B) whether the minor is charged through
21 accountability,

22 (C) whether there is evidence the offense was
23 committed in an aggressive and premeditated
24 manner,

25 (D) whether there is evidence the offense
26 caused serious bodily harm,

1 (E) whether there is evidence the minor
2 possessed a deadly weapon;

3 (iv) the advantages of treatment within the
4 juvenile justice system including whether there are
5 facilities or programs, or both, particularly
6 available in the juvenile system;

7 (v) whether the security of the public requires
8 sentencing under Chapter V of the Unified Code of
9 Corrections:

10 (A) the minor's history of services, including
11 the minor's willingness to participate
12 meaningfully in available services;

13 (B) whether there is a reasonable likelihood
14 that the minor can be rehabilitated before the
15 expiration of the juvenile court's jurisdiction;

16 (C) the adequacy of the punishment or
17 services.

18 In considering these factors, the court shall give
19 greater weight to the seriousness of the alleged offense
20 and the minor's prior record of delinquency than to the
21 other factors listed in this subsection.

22 For purposes of clauses (2) (a) (vi) and (vii):

23 "School" means a public or private elementary or secondary
24 school, community college, college, or university.

25 "School related activity" means any sporting, social,
26 academic, or other activity for which students' attendance or

1 participation is sponsored, organized, or funded in whole or in
2 part by a school or school district.

3 (3) Discretionary transfer.

4 (a) If a petition alleges commission by a minor 13
5 years of age or over of an act that constitutes a crime
6 under the laws of this State and, on motion of the State's
7 Attorney to permit prosecution of the minor under the
8 criminal laws, a Juvenile Judge assigned by the Chief Judge
9 of the Circuit to hear and determine those motions, after
10 hearing but before commencement of the trial, finds that
11 there is probable cause to believe that the allegations in
12 the motion are true and that it is not in the best
13 interests of the public to proceed under this Act, the
14 court may enter an order permitting prosecution under the
15 criminal laws.

16 (b) In making its determination on the motion to permit
17 prosecution under the criminal laws, the court shall
18 consider among other matters:

19 (i) the age of the minor;

20 (ii) the history of the minor, including:

21 (A) any previous delinquent or criminal
22 history of the minor,

23 (B) any previous abuse or neglect history of
24 the minor, and

25 (C) any mental health, physical, or
26 educational history of the minor or combination of

1 these factors;

2 (iii) the circumstances of the offense, including:

3 (A) the seriousness of the offense,

4 (B) whether the minor is charged through

5 accountability,

6 (C) whether there is evidence the offense was

7 committed in an aggressive and premeditated

8 manner,

9 (D) whether there is evidence the offense

10 caused serious bodily harm,

11 (E) whether there is evidence the minor

12 possessed a deadly weapon;

13 (iv) the advantages of treatment within the

14 juvenile justice system including whether there are

15 facilities or programs, or both, particularly

16 available in the juvenile system;

17 (v) whether the security of the public requires

18 sentencing under Chapter V of the Unified Code of

19 Corrections:

20 (A) the minor's history of services, including

21 the minor's willingness to participate

22 meaningfully in available services;

23 (B) whether there is a reasonable likelihood

24 that the minor can be rehabilitated before the

25 expiration of the juvenile court's jurisdiction;

26 (C) the adequacy of the punishment or

1 services.

2 In considering these factors, the court shall give
3 greater weight to the seriousness of the alleged offense
4 and the minor's prior record of delinquency than to the
5 other factors listed in this subsection.

6 (4) The rules of evidence for this hearing shall be the
7 same as under Section 5-705 of this Act. A minor must be
8 represented in court by counsel before the hearing may be
9 commenced.

10 (5) If criminal proceedings are instituted, the petition
11 for adjudication of wardship shall be dismissed insofar as the
12 act or acts involved in the criminal proceedings. Taking of
13 evidence in a trial on petition for adjudication of wardship is
14 a bar to criminal proceedings based upon the conduct alleged in
15 the petition.

16 (Source: P.A. 97-1150, eff. 1-25-13.)